Registered No. M--1175.

The Mysore Gazette.

Vol 58.] PUBLISHED BY AUTHORITY. [No. 42.

BANGALORE, THURSDAY, OCTOBER 25, 1923.

PART III.

Legislative Measures and Rules thereunder.

REGULATION No. IX OF 1923.

The Usurious Loans Regulation.

A Regulation to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind.

(Received the assent of His Highness the Maharaja on the 4th day of September 1923.)

WHEREAS it is expedient to give additional powers to Courts to deal in certain cases with usurious loans of money or in kind; His Highness the Maharaja is pleased to enact as follows:—

Short title and extent.

1. (1) This Regulation may be called the Usurious Loans Regulation, 1923.

(2) It extends to the whole of Mysore.

(3) The Government may, by notification in the official gazette, direct that it shall not apply to any area, class of persons, or class of transactions which it may specify in its notification.

Definitions.

2. In this Regulation, unless there is anything repugnant in the subject or context,—

(1) "Interest" means rate of interest and includes the return to be made over and above what was actually lent, whether the same is charged or sought to be recovered specifically by way of interest or otherwise.

(2) "Loan" means a loan whether of money or in kind and includes any transaction which is, in the opinion of the Court, in substance a loan.

(3) "Suit to which this Regulation applies" means any suit,—

(*a*) for the recovery of a loan made after the commencement of this Regulation; or

(*b*) for the enforcement of any security taken or any agreement, whether by way of settlement of account or otherwise, made, after the commencement of this Regulation in respect of any loan made either before or after the commencement of this Regulation.

Re-opening of transactions.

3. (1) Where, in any suit to which this Regulation applies whether heard *ex parte* or otherwise, the Court has reason to believe,—

(*a*) that the interest is excessive; and

(*b*) that the transaction was, as between the parties thereto, substantially unfair, the Court may exercise all or any of the following powers, namely, may,—

(*i*) re-open the transaction, take an account between the parties, and relieve the debtor of all liability in respect of any excessive interest;

(*ii*) notwithstanding any agreement, purporting to close previous dealings and to create a new obligation, re-open any account already taken between them and relieve the debtor of all liability in respect of any excessive interest, and if anything has been paid or allowed in account in respect of such liability, order the creditor to repay any sum which it considers to be repayable in respect thereof;

(*iii*) set aside either wholly or in part or revise or alter any security given or agreement made in respect of any loan, and if the creditor has parted with the security, order him to indemnify the debtor in such manner and to such extent as it may deem just;

Provided that in the exercise of these powers the Court shall not—

(*i*) re-open any agreement purporting to close previous dealings and to create a new obligation which has been entered into by the parties or any persons from whom they claim at a date more than six years from the date of the transaction;

(*ii*) do anything which affects any decree of a Court.

Explanation.—In the case of a suit brought on a series of transactions the expression 'the transaction' means, for the purposes of proviso (*i*), the first of such transactions.

(2) (*a*) In this section "excessive" means in excess of that which the Court deems to be reasonable having regard to the risk incurred as it appeared, or must be taken to have appeared, to the creditor at the date of the loan.

(*b*) In considering whether interest is excessive under this section, the Court shall take into account any amounts charged or paid, whether in money or in kind, for expenses, inquiries, fines, bonuses, premia, renewals or any other charges, and if compound interest is charged, the periods at which it is calculated, and the total advantage which may reasonably be taken to have been expected from the transaction.

(*c*) In considering the question of risk, the Court shall take into account the presence or absence of security and the value thereof, the financial condition of the debtor and the result of any previous

transactions of the debtor, by way of loan, so far as the same were known, or must be taken to have been known, to the creditor.

(d). In considering whether a transaction was substantially unfair, the Court shall take into account all circumstances materially affecting the relations of the parties at the time of the loan or tending to show that the transaction was unfair, including the necessities or supposed necessities of the debtor at the time of the loan so far as the same were known, or must be taken to have been known, to the creditor.

Explanation.—Interest may of itself be sufficient evidence that a transaction was substantially unfair.

(3) This section shall apply to any suit, whatever its form may be, if such suit is substantially one for the recovery of a loan or for the enforcement of any agreement or security in respect of a loan.

(4) Nothing in this section shall affect the rights of any transferee for value who satisfies the Court that the transfer to him was *bona fide*, and that he had at the time of such transfer no notice of any fact which would have entitled the debtor as against the lender to relief under this section.

For the purposes of this sub-section, the word 'notice' shall have the same meaning as is ascribed to it in Section 4 of the Transfer of Property Regulation, 1918.

(5) Nothing in this section shall be construed as derogating from the existing powers or jurisdiction of any Court.

Insolvency proceedings.

4. On any application relating to the admission or amount of a proof of a loan in any insolvency proceedings, the Court may exercise the like powers as may be exercised under section 3 by a Court in a suit to which this Regulation applies.

A. R. BANERJI,
Dewan.

REGULATION NO. X OF 1923.

A Regulation further to amend the Negotiable Instruments Regulation, 1917.

(Received the assent of His Highness the Maharaja on fourth day of September 1923.)

WHEREAS it is expedient further to amend the Negotiable Instruments Regulation, 1917; His Highness the Maharaja is pleased to enact as follows:—

Short Title

1. This Regulation may be called the Negotiable Instruments (Amendment) Regulation, 1923.

Amendment of Section 131.

2. To Section 131 of the Negotiable Instruments Regulation, 1917, the following explanation shall be added, namely:—

"Explanation.—A banker receives payment of a crossed cheque for a customer within the meaning of this section notwithstanding that he credits his customer's account with the amount of the cheque before receiving payment thereof".

A. R. BANERJI,
Dewan.